

**IN THE
COMMONWEALTH OF VIRGINIA
REAL ESTATE BOARD**

In Re:

William Smith Wise, Jr.
Norfolk, VA 23503

File Number 2004-01895
License Number 0225058199

CONSENT ORDER

Respondent, William Smith Wise, Jr. ("Wise") was at all times material to this matter a licensed Real Estate Salesperson in Virginia (No. 0225058199).

As a result of this status, Wise recognizes and acknowledges being subject to and bound by the Regulations of the Real Estate Board ("Board"), as well as by all other applicable Virginia laws.

A violation of these Regulations has been reported and investigated, and Wise knowingly and voluntarily waives any proceedings for this matter under the Administrative Process Act, §§ 2.2-4019, 2.2-4020, and 2.2-4021 of the 1950 Code of Virginia, as amended.

Board's 1999 Regulations provides:

18 VAC 135-20-200. Grounds for disciplinary action.

The board has the power to fine any licensee or registrant, and to suspend or revoke any license issued under the provisions of Title 54.1, Chapter 21 of the Code of Virginia, and the regulations of the board, where the licensee has been found to have violated or cooperated with others in violating any provision of Title 54.1, Chapter 21 of the Code of Virginia, Title 6.1, Chapter 1.3 of the Code of Virginia or any regulation of the board.

The Board's duly designated representative has found sufficient evidence to believe that:

BACKGROUND

On or about November 4, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Douglas Landry ("Dr. Landry") and Susan Landry ("Mrs. Landry") regarding several real estate transactions involving William Smith Wise, Jr. ("Wise") who acted as their real estate agent.

On or about July 2002, through August 2002, Dr. Landry became acquainted with Wise through mutual employment at DePaul Hospital in Norfolk, Virginia. On or about September 2002, Dr. Landry and Mrs. Landry entered into a brokerage relationship with Wise. On or about November 7, 2002, the brokerage relationship was memorialized in the Brokerage Relationship and Disclosure Form signed by Wise, Dr. Landry and Mrs. Landry. Wise was employed as an agent with Long & Foster Real Estate, Inc. ("Long & Foster") from July 16, 2002, through June 12, 2003, and from June 24, 2003, through July 11, 2003.

COUNT I

On or about January 2003, Wise developed a marketing booklet for the purchase of 1220 and 1222 West Ocean View Avenue, Norfolk, Virginia, which included a current site plan, a proposed site plan, rental information, and active listings. The second page of the marketing booklet contained the following statement, "The preliminary site plan has been reviewed by the city of Norfolk's zoning commission manager Lenny Newcomb. He concluded that the re-subdivision proposal conforms too (sic) current zoning guide lines." The proposed site plan showed the property being subdivided into four separate lots with common access from the road to all four lots being a ten foot ingress/egress easement. Wise gave the booklet to Dr. Landry and Mrs. Landry, who were prospective purchasers.

On or about, February 13, 2004, Lenny Newcomb ("Newcomb"), Zoning Services Manager of the City of Norfolk, Virginia, told Investigator Matney, the Board's agent, that the R-12 zoning designation of the property would allow for four single family units to be constructed on the existing two lots. However, the site plan in the marketing booklet showed a re-subdivision of the existing two lots into four separate lots, one lot having road frontage and the three remaining lots utilizing a common 10 foot easement for ingress/egress access. Newcomb stated that resubdivisions of lots zoned R-12 without road frontage would require a minimum of

ingress/egress easement would not be acceptable. The deeded access would result in a flag shaped lot at the end of the property. A special exception would be required for a flag lot as shown on the proposed site plan. Newcomb never told anyone that the proposed site plan would conform to current zoning guidelines.

Wise's actions of marketing a booklet with misleading information is a violation of the Board's 1999 Regulation 18 VAC 135-20-300(9).

COUNT II

On or about July 2002, through October 2002, Wise told Dr. Landry and Mrs. Landry that he was a retired U.S. Navy Commander. The representation Wise made that he was a retired U.S. Navy Commander induced the Landrys to believe Wise possessed a high level of integrity. However, Wise only served in the U.S. Naval Reserves as an enlisted HM3.

On or about November 7, 2002, Dr. Landry and Mrs. Landry entered into a Standard Listing Agreement with Wise for the sale 1012 Forest Lakes Circle, Chesapeake, Virginia. Wise agreed to reduce the commission to 5% since he was receiving other business from the Landrys. On or about November 11, 2002, Wise's sales manager, Candy Dennis, approved the 5% commission. On or about February 28, 2003, the Landrys accepted a Standard Purchase Agreement from Klink to purchase 1012 Forest Lakes Circle. On or about April 14, 2003, the Landrys agreed to increase Wise's commission to 5 1/2% because Wise's said that he would be fired if he accepted a 5% commission. On or about April 15, 2003, Klink purchased 1012 Forest Lakes Circle. Wise's sales manager, Candy Dennis, never told Wise he would be fired for accepting less than 5 1/2% commission.

In November 2002, Wise showed the Landrys a house located at 607 Fort Raleigh Drive, Virginia Beach, Virginia. The Landrys expressed to Wise that the property would be too small for their needs. Wise told the Landrys that he was a licensed contractor. Wise told the Landrys that it would be possible to build a second story family room over the two story foyer and he could act as a construction superintendent for the project. The Landry's agreed to purchase the house.

On or about November 9, 2002, a Standard Purchase Agreement was ratified by the Landrys to purchase 607 Fort Raleigh Drive, Virginia Beach, Virginia. Wise was the selling agent on the property. The closing took place on December 23, 2002. On or about December 2002 through early April 2003, Wise assisted the Landrys in the construction of the second story family room at 607 Fort Raleigh Drive, but he did not

complete the work.

On or about January 22, 2004, Wise testified in Virginia Beach Circuit Court that he assisted Dr. Landry and Mrs. Landry with the second story family room as a friend and in his capacity as a real estate agent. On January 22, 2004, Wise was convicted of acting as an unlicensed contractor by the Circuit Court regarding the work performed at 607 Fort Raleigh Drive.

Wise's misrepresentations are a violation of the Board's 1999 Regulation 18 VAC 135-20-300(9).

The actions outlined above violate the following Board Regulations and/or Statutes:

Board 1999 Regulations

18 VAC 135-20-300. Misrepresentation/omission.

Actions constituting misrepresentation or omission, or both, include:

9. Making any misrepresentation.

By signing this Consent Order, Wise acknowledges an understanding of the charges. Wise neither admits nor denies the violation(s) of the Board's Regulations but consents to the following term(s) by the Board:

On **Count I and II**, a monetary penalty of \$250.00 for each violation of **the Board's 1999 Regulations 18 VAC 135-20300(9)**;

Reimbursement of investigative costs to the Department in the amount of \$300.00; for a total of \$800.00; and

Revocation of Wise's real estate salesperson license is hereby imposed.

The above monetary penalties, costs or sanctions are to be paid/performed within thirty days of the effective date of this consent order. Wise acknowledges the monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Wise will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in § 58.1-15 of the

1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Wise acknowledges that failure to pay the penalty, the costs, or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Wise's license until such time as there is compliance with all terms of this Order. Wise understands the right to have this automatic suspension considered in an informal conference pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§ 2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

William Smith Wise Jr.
William Smith Wise, Jr.

May 5, 2004
Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF Chesapeake
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this 5th day of
May, 2004.

Valerie J. Matney
Notary Public

My Commission Expires: 9/30/2006

SO ORDERED:

Entered this 17th day of September, 2004.

Real Estate Board

BY: Louise Fontaine Ware
Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of the Records